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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/400,583	09/22/1999	FREDERICK D. BUSCHE	CR9-99-049	3571

7590

04/25/2002

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EXAMINER

KEMPER, MELANIE A

ART UNIT

PAPER NUMBER

3622

DATE MAILED: 04/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/400,583

Applicant(s)

BUSCHE ET AL.

Examiner

M Kemper

Art Unit

2165

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 22 September 1999.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 6-15, 21-27, 29,30 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Hughes et al., patent number 5,920,261.

Hughes et al. teaches determining data relationships including determining locations of products, recording paths of customers, identifying products chosen for purchase, and associating the locations of products with the paths of customers as claimed (see at least col. 1, line 40 – col. 2, line 55, col. 6, line 1 – col. 60, col. 12, lines 1-20, col. 13, lines 25-55, col. 15, lines 15-50, col. 16, line 40 – col. 17, line 50, col. 18, lines 15-40, col. 20, lines 25-65).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes et al., patent number 5,920,261 in view of Abell, WO 98/38589.

Hughes substantially teaches the invention as shown above, but does not teach identifying customers within a retail space. Abell teaches identifying customers within a retail space (see at least pp. 3-6, 9-10, 21). It would have been obvious to one having ordinary skill in the art at the time of the invention to have used the customer identification of Abell in the system of Hughes since the customer identification would have aided in the floor plan of items of Hughes to plan the location of items in the store based upon the customers or class of customer who is most likely to see an item as suggested by Abell.

5. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes, patent number 5,920,261 in view of Fano, patent number 6,317,718.

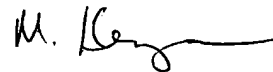
Hughes substantially teaches the invention as shown above, but does not teach use of a gps. Fano teaches determining shopper location using gps (see at least abstract, col. 2, lines 20-40). It would have been obvious to one having ordinary skill in the art at the time of the invention to have used the gps of Fano in the location determination of Hughes since the gps receiver offers the advantage of not requiring special equipment over the store as suggested by Fano or since the gps would have offered user assistance in identifying locations of desired items.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M Kemper whose telephone number is 703-305-9589. The examiner can normally be reached on M-F (9:00-5:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W. Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7240 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



M Kemper  
Primary Examiner  
Art Unit 2165

MK  
April 22, 2002